

**NOV 30 2005**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENTON FLOYD FAST HORSE, SR.,

Defendant - Appellant.

No. 04-30287

D.C. No. CR-02-00298-GMK

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Oregon  
Garr M. King, District Judge, Presiding

Submitted November 8, 2005 <sup>\*\*</sup>

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Kenton Floyd Fast Horse, Sr. appeals the 120-month sentence imposed following his guilty-plea conviction for aggravated assault of a federal officer in

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 18 U.S.C. § 111(a)(1) and (b). We have jurisdiction under 28 U.S.C. § 1291.

Because appellant was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional *Booker* error).

**REMANDED.**